SUBJECT: Public school finance

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Linebarger, Ogden, Dear, Hochberg, Grusendorf, Hernandez, Johnson, McCoulskey, Sadler, Stiles, West

0 nays

SENATE VOTE: On final passage, May 12 — 27-4 (Brown, Henderson, Leedom, Nelson)

WITNESSES: For — Lynn Moak, Texas School Alliance; Dan Casey Jim Nelson and Johnny Veselka, Texas Association of School Boards; Laurie Guidry

Against — None

On — David Anderson, Lieutenant Governor's Office; UT Law School Dean Mark Yudof; Steve Collins, Legislative Council; Chris Shields, Texas Chamber of Commerce; Debra Haas, Legislative Education Board; George Scott Christian and Bill Allaway, Texas Association of Taxpayers; Dan Wilson, Comptroller's Office; Kevin O'Hanlon, Texas Education Agency; Julie Moore, Occidental Chemical Corporation; David Hicks, Randall Buck Wood

BACKGROUND: On January 30, 1992, the Texas Supreme Court held that the current Texas school finance law (SB 351, enacted in 1991) violates the Texas Constitution. The court gave the Legislature until June 1, 1993, to remedy the plan's defects. This decision was the third in little more than two years to strike down the state's school-finance system as unconstitutional, in a lawsuit filed in state court in 1984.

The current school-finance system is based on property taxes levied by about 1,050 independent school districts. Wide variations in local school-district property wealth lead to disparities in the amount of revenue per student that districts can generate with the same property-tax rate. The state has attempted to reduce this disparity by giving state aid to relatively poor districts. More recently, the state has required some wealthier districts

to share some local tax revenue with less wealthy neighbors through county education districts (CEDs).

The Supreme Court's first two *Edgewood* decisions hinged on Art. 7, sec. 1, of the Texas Constitution, which requires the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." The court has found that to be "efficient" a school-finance system must be equitable by providing school districts with "substantially equal access to similar revenues per pupil at similar levels of tax effort."

A 1931 ruling, *Love v. City of Dallas*, reaffirmed by the Supreme Court in 1991, prohibits the state from "recapturing" local tax revenue raised by a school district and spending it for the education of students outside of the district. This decision appears to preclude taking local tax funds from property-rich school districts and distributing the funds directly to property-poor districts without a change in the Constitution.

In its most recent decision, the Supreme Court found that SB 351, the school-finance law enacted in 1991 and still in use, levies a state property ("ad valorem") tax, which is prohibited by Art. 8, sec. 1-e, of the Texas Constitution, because the CEDs have no discretion in setting the tax rate the Legislature requires them to levy. But even if CED property taxes were in fact *local* school taxes, the CED taxes would still be unconstitutional because they were not authorized by local voters, the court ruled.

Although it found the CEDs unconstitutional, the Supreme Court decided not require a refund of CED taxes already collected for 1991 or to bar collection of CED taxes for 1992, giving the Legislature until June 1, 1993, to adopt a constitutional plan. State Dist. Judge F. Scott McCown of Austin, who has lower-court jurisdiction over the school finance lawsuit, has ordered state officials to prepare to cut off distribution to school districts of state funds, including CED funds, if a constitutional plan is not in effect by June 1.

On May 1 the voters rejected, by 36.9 percent to 63.1 percent, a proposed constitutional amendments that would have authorized the Legislature to enact laws redistributing property taxes levied and collected by a school

district among other districts in the state ("statewide recapture"). The Legislature also would have been authorized to create county education districts (CEDs), including multi-county districts, and to permit them to levy, collect and distribute property taxes at a rate of up to $1.00 per $100 of property valuation; a higher rate could have been set with voter approval. The amount redistributed, either statewide or within CEDs, could not have exceeded 2.75 percent of all state and local public-school revenue.

The voters also rejected, by 48.7 percent to 51.3, a proposed constitutional amendment that would have exempted school districts from complying with educational mandates not fully funded by the state and, by 44.2 percent to 55.8 percent, a proposed constitutional amendment that would have authorized the Legislature to issue up to $750 million in bonds to finance school facilities.

DIGEST:

Equalized wealth level

CSSB 7 would cap school district wealth per student at $280,000 — the "equalized wealth level."

A school district with more than $280,000 in property value per student would be permitted to choose from among five ways to lower its wealth:

- consolidation with another district;
- detachment of territory;
- purchase of average daily attendance credit;
- contracting for the education of nonresident students;
- tax base consolidation with another district.

The commissioner of education would order the consolidation of any district that did not reduce its wealth per student to $280,000 by November 1, 1993. Districts would be required to execute agreements by September 1, 1993.

Contingency. If any of the options were held invalid by a court, a school district would be entitled to exercise any of the remaining options. If all of the options were held invalid, the commissioner would consolidate districts to achieve the equalized wealth level.

The commissioner could extend effective dates and time periods as necessary for the effective and efficient administration of the plan.

General rules. A district with more than $280,000 in property value per student could not levy property taxes for any year after the tax year in which the commissioner determined that the district exceeded the equalized wealth level. A district notified that it exceeded the equalized wealth level could not adopt a tax rate for the tax year in which it received the notice, which would be required by August 1, until the commissioner certified that the district had achieved the equalized wealth level.

A consolidation or detachment and annexation would be effective for foundation school program funding purposes for the school year that began in the calendar year in which the action was agreed to or ordered. The action would apply to property taxes beginning with the tax year in which the action was agreed to or ordered.

A district that changed its boundaries or consolidated its tax base could not change its boundaries again unless the commissioner certified that the change would not raise the district's wealth above the equalized wealth level.

A consolidation or detachment and annexation would not affect a tax abatement agreement, which would continue as if the district in which the property was included had executed the agreement.

Consolidation by agreement. The governing boards of two or more districts could agree to consolidate the districts to establish a consolidated district with less than $280,000 in property wealth per student.

The agreement could include a governance plan designed to preserve community-based and site-based decision making within the consolidated district, including the delegation of specific powers of the district board,

other than the power to levy taxes. The plan could provide for a transitional board during the first year after consolidation, but thereafter the board would be elected from single-member districts within the consolidated district. For the first two years after consolidation, the district would be entitled to receive the total state funding to which the districts would have been entitled separately.

Detachment and annexation by agreement. Two districts could agree to detach territory from one district and attach it to the other district if, after the action, both districts had less than $280,000 in property wealth per student.

Any property divided between different districts would be appraised as a unit; the taxable value would be allocated between the districts. The agreement could allocate to the receiving district any indebtedness of the detaching district.

Purchase of attendance credit. A district could, with voter approval, purchase attendance credits to lower its wealth per student to the equalized wealth level. Each credit, which would increase a district's weighted average daily attendance by one student for one year, would cost an amount equal to the statewide average of combined state and local revenue per weighted student in average daily attendance for the prior school year.

Payments would be made by February 1 and deposited in the state treasury to the credit of the foundation school fund.

Contract for education of nonresident students. A district could, with voter approval, agree to educate the students of another district. The weighted average daily attendance of the students served would be added to the weighted average daily attendance of the contracting district in determining the property wealth per student and attendance of each district.

Tax base consolidation. Two or more districts could agree, with the approval of voters in each district, to create a consolidated taxing district for the maintenance and operation of the component districts, as long as the consolidated taxing district had a wealth per student below the equalized

wealth level. The ballot would include authorization of a tax rate for the consolidated taxing district.

The consolidated district would be governed by the boards of the component districts meeting jointly. A favorable vote by a majority of a quorum of each component district's board would be required for any action by the joint board. The joint board would levy a maintenance tax for the benefit of the component districts; a component district could not levy a separate tax for maintenance and operations. Tax revenue would be distributed on the basis of the number of weighted students in average daily attendance in each component district. A component district could issue bonds and levy debt-service taxes, which would be eligible for the guaranteed yield program.

The agreement could provide for total tax base consolidation, rather than consolidation for maintenance and operation purposes only. Component districts could levy taxes only to retire bonds issued before the consolidation. The joint board could issue bonds and levy debt-service taxes. The agreement could permit the consolidated district to assume all or part of the indebtedness of all component districts.

Consolidation by the commissioner. The commissioner could, if a district did not successfully exercise an option that reduced its wealth per student below the equalized wealth level, order that district be consolidated with one or more other districts. The commissioner, in selecting other districts to be consolidated with that district, would give priority to, in order, a contiguous district, the nearest district in the same county, another district in the same county, a district that would result in a consolidated district in which the tax burden was similar to the burden in the existing districts, and the nearest other district.

The commissioner's decision would be final, and the Administrative Procedure Act would not apply. The board of the district with the largest enrollment would serve as the board of the consolidated district until the next regular election, at which time the consolidated district would elect a seven-member board.

Foundation School Program

CSSB 7 would reenact Chapter 16 of the Education Code, which creates the Foundation School Program.

Tier one. The basic allotment would be $2,300, rather than $2,600, for the 1993-94 school year and $2,800 for the 1994-95 school year and thereafter. The local fund assignment tax rate — the minimum tax rate that a district must levy — would be 86 cents per $100 of property valuation, rather than 92 cents in 1993-94 and $1.00 for each school year thereafter.

The cost-of-education adjustment, which adjusts the basic allotment for geographic variation known in resources costs and costs due to factors beyond the control of a district, would be the cost-of-education index and formula adopted in December 1990 by the foundation school fund budget committee, rather than adjustments to have been adopted by November 1, 1992. The small district adjustment and sparsity adjustments would be continued, rather than expire on September 1, 1993. The Legislative Education Board and the Legislative Budget Board, with the assistance of the Educational Economic Policy Center and the Texas Education Agency, would no longer be required to conduct certain cost studies.

Proration. By October 1 of each even-numbered year (before each regular session of the Legislature), the Texas Education Agency would submit an estimate of student enrollment by school district for the following biennium, and the comptroller would submit an estimate of the total value of all taxable property in the state for the following biennium. These estimates would be updated by March 1 of each odd-numbered year (during the regular session).

Using these estimates, the commissioner of education would, by September 1 of each odd-numbered year, calculate the initial amount of the Foundation School Fund grant to which each district was entitled and issue a warrant for the initial entitlement. The commissioner would compute adjusted entitlements as data for the school year became available throughout the fiscal year and, by January 31 of each year, adjust the amount of warrants for state aid.

If the appropriated amount was not sufficient to satisfy all estimated payments to be made in the second year of a fiscal biennium, the Legislature could transfer money from the Economic Stabilization Fund or another source to the Foundation School Fund to increase the payments. If the Legislature did not appropriate additional funds, the commissioner would reduce tier-one allotments in proportion to a district's property wealth. A district's allotment for the next fiscal year would be increased by the amount of any reduction.

Tier two. The guaranteed yield for each cent of a district's tax effort above the minimum local-fund-assignment rate would be $22 per weighted student, rather than $26, for the 1993-94 school year and $28 for each school year thereafter. The district enrichment and facilities tax rate — that portion of a district's tax rate, beyond the minimum local-fund-assignment rate required to receive first-tier state aid, for which the yield per penny per weighted student is guaranteed by the state — would be 42 cents per $100 of property valuation, rather than 45 cents.

Auto rollback. A rollback election to limit a district's tax rate for the following year would be held if a district raised its maintenance-and-operations tax rate by 6 cents or more, rather than 8 cents or more. A petition signed by 10 percent of the voters in the district would no longer be required. For the 1993 tax year, a district could raise taxes by the amount necessary to replace 1992-93 revenue for a county education district (CED) without a rollback election.

Limit on administrative costs. The commissioner annually would calculate the administrative cost ratio — the ratio of administrative costs to instructional costs — for school districts. Separate calculations would be made for districts with 1,600 or fewer students and for those with more than 1,600 students. Ratios could be adjusted to allow for additional costs required by the sparsity of a district or students with special needs. Administrative costs would include all expenses for administration (other than the cost of campus principals), curriculum and staff development, data processing and dissemination of information.

The commissioner would deduct from a district's tier-one allotment for the following year the amount by which the district's administrative costs

exceeded the amount permitted by its administrative cost ratio. If a district did not receive a tier-one allotment, it would remit an amount equal to the excess for deposit to the credit of the Foundation School Fund. The provision would first apply to administrative costs for the 1994-95 school year and a reduction of state-aid payments in the 1995-96 school year.

The commissioner would, by September 1 of each year, notify each district of its administrative cost ratio for the following school year. By February 1 of each year, the commissioner would notify each district if its budgeted administrative costs for the next school year exceeded its administrative cost ratio. The commissioner could grant a waiver in unusual circumstances. The district would report any amount withheld or remitted in its annual performance report and district report card.

Technology allotment. The technology allotment, which may be used to acquire technological equipment and services and to research and develop emerging instructional technology, would be $30 per student, rather than $40 per student, in the 1994-95 school year, $45 in 1995-96 and $50 in 1996-97 and thereafter.

Accountability

District report card. The Texas Education Agency would, starting December 1, 1994, annually distribute to each school district a district report card. The report card, which would compare a district to three other districts of similar size, wealth per pupil and demographics, would include student performance on both criterion- and norm-referenced assessment instruments, dropout rates, student/teacher ratios in kindergarten through fourth grade, administrative, instructional and total expenditures, and any amount by which the district exceeded its administrative cost ratio.

The district report card would be delivered, along with each student's report card, to the parent of each student in the district by the last day of the school year.

Optional extended year program. A district could, with the commissioner's approval, provide an extended year program of up to 45 days for students in kindergarten through eighth grade who would otherwise

not be promoted. To provide funding for the program, a district could provide up to five fewer days of instruction than otherwise required.

Other provisions

Appraisal of annexed property. The appraisal district in which a property was located would appraise any property annexed to a district because of the bill.

Abolition of county education districts. County education districts (CEDs) would be abolished, effective September 1, 1993. Each CED would transfer its funds, assets and liabilities to its component school districts.

SUPPORTERS SAY:

CSSB 7 would create an equitable school-finance system that would be acceptable to the courts and prevent a cut-off of state aid on June 1.

The bill would reduce the disparity in taxable wealth per pupil among school districts by requiring all districts to reduce their wealth to a maximum of $280,000 in property value per student. Each of the 109 districts with property wealth above that level would be able to choose from among five options for reducing wealth per student and select the one best suited to its local situation. This "Local Option Plan" would permit the maximum feasible local control. Voter approval would be required for three of the five options.

A district could, with voter approval, create a local taxing district by consolidating its tax base with one or more other districts, purchase from the state attendance credits necessary to reduce its wealth per student, or develop programs with other districts to increase the number of students educated by the district, which would reduce its wealth per student. A district also could voluntarily consolidate with one or more other districts or permit another district to tax some of its property. If a district did not choose a option by September 1, 1993, the commissioner of education would consolidate it with one or more other districts to create a new district with the required maximum wealth per pupil.

CSSB 7 would include in an equalized funding system all taxable property in *all* school districts in the state, as required by the Supreme Court. The Senate version would permit the seven school districts with the greatest residential wealth per student to remain outside the system — a fatal flaw. Four of the five options proposed by the House committee substitute are currently permitted by statute, and so would be likely to be acceptable to the courts. The one new option, the purchase of attendance credits, would require voter approval, and so would probably comply with court decisions.

CSSB 7 would not mandate the state-controlled redistribution or recapture that the voters convincingly rejected in the May 1 election, nor would it require forced consolidation of wealthy school districts. It would not permit the state to determine which property would be detached from a district and annexed to another, as would the Senate version. Instead, the school boards of the 109 districts with taxable property wealth of more than $280,000 per student would have the summer to decide which of the options or combination of options would be best for each individual district.

A board could submit to the voters as many options as necessary until November 1, 1993, when a tax rate must be set. If the voters rejected an option, a board could still implement voluntary consolidation or voluntary detachment and annexation, which do not require voter approval, before facing forced consolidation by the commissioner. A district could change its option each year as its property wealth and student population changed.

CSSB 7 contains several provisions to help hold the line against local property tax increases. The committee substitute would lower, from 8 cents to 6 cents, the tax rate increase that would trigger a tax rollback election. More importantly, an election would be held automatically, without requiring a petition by 10 percent of the voters. Districts would have to keep their administrative costs below a level determined by the commissioner of education, who would take into consideration a district's size and special-needs students. A district exceeding the administrative cost limit would lose that amount of state aid or, if it did not receive state aid, would owe the state the excess amount.

Parents would receive report cards comparing their school district to similar districts in terms of test results, dropout rates, student-teacher ratios and

administrative expenditures, which would inform parents and encourage their participation in district decision-making. Schools could run 45-day summer programs for students who would otherwise not be promoted to the next grade, which would be much less expensive than paying for an extra year's education for those students.

The Senate version is of dubious constitutionality, since it would exclude the excess property wealth of seven of the richest districts. It also could violate the constitutional requirement of equal and uniform taxation, since two parcels of property could be taxed by the same district at different tax rates — one for property actually located in the district and another for an annexed parcel that would not owe debt-service taxes for bonds previously issued by its new district. The state would control which properties were selected for detachment and annexation, which could result in arbitrary decisions that ignored local situations.

OPPONENTS SAY:

CSSB 7 is a bizarre blend of ideas that offers the appearance of local control, but merely masks the ultimate threat of forced consolidation. Selection of one of the five proposed options, with or without voter approval, cannot be considered truly voluntary when the alternative is total loss of local control through consolidation. Texas courts have consistently held that districts cannot be forced to act under coercion.

CSSB 7 is a multiple-choice Robin Hood plan, not really different from the plan overwhelmingly rejected by the voters. The plan would essentially "level down" education spending in more than 100 districts for the sake of a judicially imposed notion of equity. Tearing down the few districts that have built exemplary programs would not improve education in the state. Taxpayers who have chosen certain districts for their excellent schools should not be deprived of their right to maintain local control of the funding of those schools. Local tax money should not be siphoned off to pay for educating children in other districts.

CSSB 7 fails to meet the basic requirement of the *Edgewood* decisions — that the school finance system provide substantially equal access to similar revenues per pupil at similar levels of tax effort. The guaranteed yield program would provide some districts with $22 per pupil per penny of tax effort, while others could generate up to $28 per pupil per penny. Tax

rates above the guaranteed level of $1.28, which is roughly the state average tax rate, would be totally unequalized, so that districts would be entirely dependent on their local property wealth to generate revenue. The wealthiest districts could continue to produce $28 per penny, while the poorest might be able to raise only $3 per penny. No court would let this disparity stand.

The *Love v. Dallas* decision, which held that school districts hold their school-tax money as a public trust for the exclusive benefit of the students of that district, would likely bar the attendance credit scheme. Money sent to the state to purchase credits would essentially go to pay for the education of children in other, lower-wealth districts. An agreement by a district to pay to educate students in another district also would likely violate the *Love* rule. A local vote would not be sufficient to change the terms of the trust to permit school-tax money to be spent outside the district.

The attendance credit option would allow wealthy districts to exercise the power of their disproportionate share of property wealth. For instance, a district could purchase credits that would require ten cents of tax effort by the average district, but would need to levy only three cents of taxes on its high-value local property to generate the cost of the credits. The remaining seven cents of tax effort could be used for enriched programs and new facilities or to give local property owners a tax break. It would be better to charge wealthy districts according to their revenue-generating capacity, which would truly lower their effective wealth per student to the equalized level.

The option of operating a program for students in another district is poorly conceived. Would these students be supported at the adopting district's average level of spending or at the lower level of their home district? Would the adopting district have to accept students with special needs? Would the adopting district set up a separate program within the other district, or merely donate some money?

OTHER OPPONENTS SAY:

Endless tinkering cannot fix a system that is so dependent on local property taxes to support public education. The state must take on a much larger proportion of education funding, which would probably require a major restructuring of the state tax system.

A state income tax generates the bulk of state revenue for most other states. The Legislature could enact an income tax and use the revenues to support public education and largely replace local school property taxes. Another alternative would be to replace the business property tax and franchise tax with a single levy paid by all businesses in proportion to their business activities in the state. Current business taxes drain resources from capital-intensive industries, while a broader tax also would be levied on service industries, which are the fastest-growing segment of the state's economy.

Proceeds from the highly successful state lottery should be dedicated to public education. The voters say they thought that lottery revenue would be used to support schools when they approved it in 1991, and they will continue to raise this issue until the Legislature finally bows to public opinion and dedicates the money.

A voucher program that allowed students a choice among all schools and districts would create beneficial competition among schools. Since the government can determine which school and district a child will attend, schools have little incentive to increase the attractiveness of their programs. Financial support that would follow a student, regardless of school, would permit parents to choose the program that reflected their values and best met the needs of their individual child.

The equalized wealth level should be set at $250,000 in property wealth per student, rather than $280,000. This change would reduce the disparity in property wealth permitted by the bill, increasing its chances for judicial approval. Some provision should be made for funding school facilities, as repeatedly required by the Supreme Court. The priority list to be considered by the commissioner in choosing which district to consolidate with a wealthy district should encourage consolidation with a district with below-average wealth. For instance, if Alamo Heights were to be forced to consolidate, it should have to merge with Edgewood, which would benefit more than most other districts from access to additional property wealth.

NOTES:

Senate version

The Senate version involves the transfer of business property among school districts.

Detachment and annexation. For each school year the commissioner of education would order the detachment of non-residential property from one school district and the annexation of that property to one or more other districts, without regard to whether the property was contiguous to the district to which it was annexed.

The commissioner could detach property only from a district with more than $280,000 in property wealth per student before detachment and could annex it only to a district that would not exceed that amount of wealth after the annexation.

District detached from. Property could not be detached if a district would be unable to maintain its 1992-93 level of maintenance-and-operations spending per weighted student at an effective tax rate of $1.50 per $100 of property value after detachment.

District annexed. In considering to which district property should be annexed, the commissioner would give preference to districts that would receive funds through the guaranteed-yield program. The commissioner would give preference to, in order, a district contiguous to the detached property, the district in the same county nearest to the detached property, any other district in the same county and the nearest district elsewhere in the state.

Other considerations. The commissioner would consider any tax rate inequality that might result between competing businesses in the same vicinity and the likelihood that property would need to be transferred again. If the property was annexed to more than one district, the commissioner would apportion the taxable value of the property among those districts.

The commissioner would notify each affected school district by July 15 of each year. A decision of the commissioner would be final and not appealable; the Administrative Procedure Act would not apply.

Detachment and annexation of real property would apply to taxable *personal* property having taxable situs in the same location as the real property. Tax-exempt property could not be detached and annexed. A

detachment and annexation would apply to property taxes beginning with the tax year in which the detachment and annexation was made.

Students. A student residing in an area that was detached could attend school in the original district or the district to which the property was annexed. The student would be counted in the district to which the property was annexed for purposes of calculating average daily attendance. If the student chose to remain in the original district, the state would withhold foundation school money from the district to which the property was annexed and allocate those funds to the district the student was attending, plus the additional cost to the district of educating the student.

Bonds. Any debt-service tax levied on a property before it was detached would continue to be levied on that property until the bonds were retired. The district to which the property was annexed could not tax that property for bonds issued before the property was annexed. The commissioner could consider debt-service taxes on a property in determining to which district to annex property.

Floor substitutes and amendments

Rep. Mowery has filed a floor substitute that would provide state funding to school districts sufficient to provide an average teacher salary of $37,354 for the number of teachers required to maintain a student-to-teacher ratio of not less than 20-to-1. Administrative costs would be covered by local tax revenues. The proposal would be similar to the Gilmer-Aiken law under which Texas schools operated until the passage of HB 72 in 1984.

Rep. Ogden has filed a floor substitute that would create county-unit systems that could levy, with voter approval, a countywide tax of up to $1.00, the proceeds of which would be distributed to component districts according to average daily attendance. The state would guarantee each county-unit system a yield of $29.30 per weighted student. Local districts would be guaranteed $15 per weighted student up to a total tax rate of $1.50.

Reps. Allen and Shields have filed a floor substitute that would create an education excellence program that would guarantee each district $4,400 per

student in average daily attendance, if the district levied a tax of $1.25. State lottery revenues would be dedicated to the program.

Rep. D. Smith has filed a floor substitute that would eliminate weights from school funding formulas. The state would reimburse districts for the excess costs of providing special services to students with disabilities. Voter approval would be required for any school-tax increase. A district rated exemplary or that received less than 10 percent of its revenue from the state would be exempt from most regulations.

Reps. Krusee and Wilson have filed a floor amendment that would establish an education scholarship program that would provide $4,000 per year to support the private school tuition of up to one-half of all children in a district eligible for the free or reduced school lunch program. Preference would be given to students who are performing poorest academically and who can least afford private school tuition.

Reps. Grusendorf, Berlanga, Wilson, H. Cuellar, Van de Putte and Krusee have filed a floor amendment that would create public education scholarships that would permit all educationally disadvantaged students in up to 60 school districts to attend any public school or nongovernmental school that accepted students funded by the state.

Rep. Grusendorf has filed a floor amendment that would create an accountability system involving assessment of academic skills, performance indicators, accreditation status and sanctions, successful schools awards and other awards. The Texas Education Agency would be sunsetted September 1, 1995. The amendment is similar to SB 1377 by Ratliff, et al., which passed the Senate on May 12.

Rep. Willis has filed a floor amendment that would prohibit school districts from employing legislative lobbyists.

THE CONFERENCE COMMITTEE REPORT ON SB 7: PUBLIC SCHOOL FINANCE

Conference Committee Recommendations

The conference committee report on SB 7 would revise the public-education finance system by setting a cap on the taxable property value per student available to a school district.

The conference committee would generally follow the approach of the House version in the finance provisions of the bill, allowing districts to choose from among five methods of decreasing property wealth per student to the required level. However, the conference committee would change the consequences for a district that failed to decrease its wealth to the prescribed level. The House version would have required the commissioner of education to order the consolidation of that district. The conference committee would require the commissioner to first consider detachment and attachment to another district of some of the district's property; total consolidation would be considered only if detachment would not sufficiently reduce the district's wealth per student.

The conference committee would make a major change in the tier-two guaranteed yield program. The House version would have guaranteed every district $22 in state and local revenue per weighted student for each cent of a district's tax effort above the minimum local-fund-assignment tax rate of 86 cents, up to a total tax effort of $1.28. The Senate version would have established a sliding scale guaranteed yield program that generated $20 per weighted student per penny of tax effort for the first 30 cents above a local-fund-assignment tax rate of 90 cents (to a total tax effort of $1.20), then a decreasing amount per penny for the next 30 cents, to a guaranteed yield per penny of $17 per weighted student at a total tax effort of $1.50. The conference committee would provide a flat guarantee of $20.55 per weighted student for every penny of tax effort above a local-fund-assignment tax rate of 86 cents, up to a total tax effort of $1.50 — the maximum maintenance-and-operations tax rate. However, the tax rate eligible for the guaranteed yield would be the tax rate already set for the second year of the prior fiscal biennium, so a local tax increase would not immediately increase a district's state aid under the guaranteed yield program.

Equalized wealth level

CSSB 7 would cap school district wealth per student at $280,000 — the "equalized wealth level." A school district with more than $280,000 in property value per student would be permitted to choose from among five ways to lower its wealth:

- consolidation with another district;
- detachment of territory and attachment to another district;
- purchase of average daily attendance credit, with voter approval;
- contracting for the education of nonresident students, with voter approval;
- tax base consolidation with another district, with voter approval.

The commissioner of education would order the detachment of property or consolidation of any district that did not reduce its wealth per student to $280,000 by November 1 1993. Districts would be required to execute any agreements by September 1, 1993. Elections would be held within 45 days of an agreement. (Adoption of the conference committee report by less than a two-thirds vote of each house would create an effective date of August 29, 90 days after the end of the regular session.)

Contingency. If any of the options were held invalid by a court, a school district would be entitled to exercise any of the remaining options. If all of the options were held invalid, the commissioner would detach property or consolidate districts to achieve the equalized wealth level.

The commissioner could extend effective dates and time periods as necessary for the effective and efficient administration of the plan.

General rules. A district notified that it exceeded the equalized wealth level could not adopt a tax rate for the tax year in which it received the notice, which would be required by July 15, until the commissioner certified that the district had achieved the equalized wealth level.

A consolidation or detachment and annexation would be effective for foundation school program funding purposes for the school year that began in the calendar year in which the action was agreed to or ordered. The action would apply

to property taxes beginning with the tax year in which the action was agreed to or ordered.

A district that changed its boundaries or consolidated its tax base could not change its boundaries again unless the commissioner certified that the change would not raise the district's wealth above the equalized wealth level.

A consolidation or detachment and annexation would not affect a tax abatement agreement, which would continue as if the district in which the property was included had executed the agreement. Tax abatements executed after May 31, 1993, would not affect the calculations of wealth per student.

Consolidation by agreement. The governing boards of two or more districts could agree to consolidate the districts to establish a consolidated district with less than $280,000 in property wealth per student.

The agreement could include a governance plan designed to preserve community-based and site-based decision making within the consolidated district, including the delegation of specific powers of the district board, other than the power to levy taxes. The plan could provide for a transitional board during the first year after consolidation, but thereafter the board would be elected from single-member districts within the consolidated district. For the first two years after consolidation, the district would be entitled to receive the ~~total~~ state funding to which the districts would have been entitled separately.

for cost of education index + small-sparse adjustment

Detachment and annexation by agreement. Two districts could agree to detach territory from one district and attach it to the other district if, after the action, both districts had less than $280,000 in property wealth per student.

Any property divided between different districts would be appraised as a unit; the taxable value would be allocated between the districts. The agreement could allocate to the receiving district any indebtedness of the detaching district.

Purchase of attendance credit. A district could, with voter approval, purchase attendance credits to lower its wealth per student to the equalized wealth level. Each credit, which would increase a district's weighted average daily attendance by one student for one year, would cost an amount equal to the district's total tax revenue per weighted student for that school year or the statewide average of combined state and local revenue per weighted student for the prior school year, whichever was greater.

Payments would be made by February 15 and deposited in the state treasury for Foundation School Fund purposes.

Contract for education of nonresident students. A district could, with voter approval, agree to educate the students of another district. The weighted average daily attendance of the students served would be added to the weighted average daily attendance of the contracting district in determining the property wealth per student and attendance of each district. The agreement would require an expenditure per weighted student at least equal to the contracting district's total tax revenue per weighted student for that school year or the statewide average of combined state and local revenue per weighted student for the prior school year, whichever was greater, unless the commissioner determined that a quality educational program could be delivered for less.

Tax base consolidation. Two or more districts could agree, with the approval of voters in each district, to create a consolidated taxing district for the maintenance and operation of the component districts, as long as the consolidated taxing district had a wealth per student below the equalized wealth level. The ballot would include authorization of a tax rate for the consolidated taxing district.

The consolidated district would be governed by the boards of the component districts acting jointly. A favorable vote by a majority of each component district's board would be required for any action by the joint board. The joint board would levy a maintenance tax for the benefit of the component districts; a component district could not levy a separate tax for maintenance and operations. Tax revenue would be distributed on the basis of the number of weighted students in average daily attendance in each component district. A component district could issue bonds and levy debt-service taxes, which would be eligible for the guaranteed yield program.

The agreement could provide for total tax base consolidation, rather than consolidation for maintenance and operation purposes only. Component districts could levy taxes only to retire bonds issued before the consolidation; the joint board could issue bonds and levy debt-service taxes. The agreement could permit the consolidated district to assume all of the indebtedness of all component districts.

Action by the commissioner. The commissioner could, if a district did not successfully exercise an option that reduced its wealth per student below the equalized wealth level, order that property be detached from that district or that the district be consolidated with one or more other districts.

Detachment and attachment. The commissioner could detach and annex only mineral property, real property used in the operation of a public utility and industrial or commercial property. The commissioner would detach whole parcels in descending order of taxable value. If the detachment of a whole parcel would result in wealth per student of less than $270,000, the commissioner could either detach the next parcel in order of value or detach a portion of the more valuable parcel.

The commissioner would attach property only to a district with wealth per student lower than the guaranteed yield level ($205,500). Priority would be given to a district in the same county with a rate within 15 cents of the rate of the district from which the property was detached, then to a district in the same regional education service center with a tax rate within 10 cents.

Consolidation. The commissioner, in selecting other districts to be consolidated with that district, would give priority to, in order, the contiguous district in the same county with the lowest wealth per student, the district in the same county with the lowest wealth, a contiguous district that requests consideration, districts that have not requested consolidation, the district in the same regional education service center with the lowest wealth, and a district with a similar tax rate to the district being consolidated. (The House version had a slightly different priority order.)

The commissioner's decision would be final, and the Administrative Procedure Act would not apply. The board of the district with the largest enrollment, plus one member from each other district, would serve as the board of the consolidated district until the next January, at which time the consolidated district would elect a nine-member board.

Phase-in. A district would be able to retain more than $280,000 in property wealth per student during the three-year phase-in period. Districts that are unable to maintain their 1992-93 level of maintenance-and-operations revenue per weighted student without exceeding their current tax rate, or a rate of $1.375 in 1993-94 or $1.50 in 1994-95 and 1995-96, whichever was greater, would be permitted to retain the level of wealth that permits them to maintain their M&O revenue at these tax rates.

Foundation School Program

SB 7 would reenact Chapter 16 of the Education Code, which creates the Foundation School Program and which otherwise would expire on September 1 under the Texas Supreme Court's order in the *Edgewood III* decision.

Tier one. The basic allotment — the minimum amount of state and local funding per student — would be $2,300 per student, rather than $2,600, for the 1993-94 school year and $2,800 per student for the 1994-95 school year and thereafter. The local fund assignment tax rate — the minimum tax rate that a district must levy — would be 86 cents per $100 of property valuation, rather than 92 cents, in 1993-94 and $1.00 for each school year thereafter. (These provisions follow the House version. The Senate version would have set a basic allotment of $2,450 and a local-fund-assignment tax rate of 90 cents.)

The cost-of-education adjustment, which adjusts the basic allotment for geographic variation in resources costs and costs due to factors beyond the control of a district, would be the cost-of-education index and formula adopted in December 1990 by the foundation school fund budget committee (FSFBC), rather than adjustments to have been adopted by November 1, 1992. The FSFBC would determine the cost-of-education adjustment, beginning with the 1995-96 school year. The small district adjustment and sparsity adjustments would be continued, rather than expire on September 1, 1993.

Proration. By October 1 of each even-numbered year (before each regular session of the Legislature), the Texas Education Agency would submit an estimate of the tax rate and student enrollment by school district for the following biennium, and the comptroller would submit an estimate of the total value of all taxable property in the state for the following biennium. These estimates would be updated by March 1 of each odd-numbered year (during the regular session).

Using these estimates, the commissioner of education would issue a warrant for each district's entitlement. A district's entitlement could not exceed the amount to which it would be entitled at its tax rate for the final year of the preceding biennium. Any excess would be placed in a reserve account and used, in the succeeding fiscal year, to adjust entitlements that have increased because of variations in the district's tax rate, enrollment or property value.

If the appropriated amount was not sufficient to finance increased allocations from the reserve fund, the Legislature could transfer money from the Economic Stabilization ("Rainy Day") Fund to the Foundation School Fund to increase the payments. If the Legislature did not appropriate additional funds, the commissioner would reduce tier-one allotments so that each district could make up the reduction with the same number of cents increase in tax rate. A district's allotment for the next fiscal year would be increased by the amount of any reduction. (The House version contained a similar proration method, but would have reduced a district's entitlement in proportion to its taxable property value.)

Tier two. The guaranteed yield for each cent of a district's tax effort above the minimum local-fund-assignment (LFA) rate of 86 cents would be $20.55 per weighted student, rather than $26, for the 1993-94 school year and $28 for each school year thereafter. The district enrichment and facilities tax rate — that portion of a district's tax rate, beyond the minimum local-fund-assignment rate required to receive first-tier state aid, for which the yield per penny per weighted student is guaranteed by the state — would be 64 cents per $100 of property valuation, rather than 45 cents. The guaranteed yield program would include all tax effort up to the maximum maintenance-and-operations tax rate of $1.50 (86 cents LFA plus 64 cents guaranteed yield). However, a district's tier-two allotment would be calculated using the district's tax rate for the second year of the prior fiscal biennium, so a local tax increase would not be immediately reflected in guaranteed-yield calculations.

(The House version would have guaranteed every district $22 in state and local revenue per weighted student for each cent of a district's tax effort above the minimum local-fund-assignment tax rate of 86 cents, up to a total tax effort of $1.28. The Senate version would have established a sliding scale guaranteed yield program that generated $20 per weighted student per penny of tax effort for the first 30 cents above a local-fund-assignment tax rate of 90 cents (to a total tax effort of $1.20), then a decreasing amount per penny for the next 30 cents, to a guaranteed yield per penny of $17 per weighted student at a total tax effort of $1.50.)

Automatic rollback election. A rollback election to limit a district's tax rate for the ~~following~~ year would be held if a district raised its maintenance-and-operations tax rate by 6 cents ~~or~~ more, ~~rather than 8 cents or more.~~ A petition signed by 10 percent of the voters in the district would no longer be required; a rollback election would be automatic. For the 1993 tax year, a district could raise taxes without a rollback election by the amount necessary to replace 1992-93 revenue from a county education district (CED).

Limit on administrative costs. The commissioner annually would calculate the administrative cost ratio — the ratio of administrative costs to instructional costs — for school districts. Separate calculations would be made for districts with fewer than 500 students, for those with 500 to 999 students, with from 1,000 to 4,999 students, with from 5,000 to 9,999 students and with more than 10,000 students. (The House version would have made separate calculations for two categories — below and above 1,600 students.) Ratios could be adjusted to allow for additional costs required by the sparsity of a district or students with special needs. Administrative costs would include all expenses associated with managing, planning, directing, coordinating and evaluating a school district. Instructional costs would include expenses associated with teacher-student instruction.

The commissioner would deduct from a district's tier-one allotment for the following year the amount by which the district's administrative costs exceeded the amount permitted by its administrative cost ratio. If a district did not receive a tier-one allotment, it would remit an amount equal to the excess for deposit to the credit of the Foundation School Fund. The provision would first apply to administrative costs for the 1994-95 school year and a reduction of state-aid payments in the 1995-96 school year.

Technology allotment. The technology allotment, which may be used to acquire technological equipment and services and to research and develop emerging instructional technology, would be $30 per student, rather than $40 per student, in the 1994-95 school year, $45 in 1995-96 and $50 in 1996-97 and thereafter.

Optional extended year program. A district could, with the commissioner's approval, provide an extended year program of up to 45 days for students in kindergarten through eighth grade who would not otherwise be promoted. To provide funding for the program, a district could provide up to five fewer days of instruction than otherwise required. The state could fully fund a similar program for up to 30 days as a pilot program for first graders in 1993-94 and for first and second graders in 1994-95.

Comparison to House version

The conference committee report retains almost all of the provisions of the committee substitute recommended by the House Public Education Committee. However, many of the amendments adopted on the House floor were deleted in the conference committee report.

Changes from House committee substitute.

Failure to reduce wealth. The House committee substitute would have required the commissioner of education to order the consolidation of any district that did not reduce its wealth per student to $280,000 by November 1, 1993. The conference committee report would require the commissioner to first consider detaching property from that district for annexation to another district. Consolidation would be considered only if detachment and annexation would not lower the district's wealth to below $280,000 per student.

Guaranteed yield program. The committee substitute would have guaranteed each district a total state and local revenue ("yield") of $22 per weighted student for each cent of the district's tax effort above the minimum local-fund-assignment rate of 86 cents. The district enrichment and facilities tax rate — that portion of a district's tax rate, beyond the minimum local-fund-assignment rate required to receive first-tier state aid, for which the yield per penny per weighted student is guaranteed by the state — would have been 42 cents per $100 of property valuation. The conference committee report instead would guarantee each district a yield of $20.55 per weighted student for each penny of tax effort above 86 cents up to a total tax effort of $1.50 — the maximum maintenance-and-operations tax rate.

Under current law, the guaranteed yield would be $26 per weighted student per penny of tax effort for the 1993-94 school year and $28 for each school year thereafter. The district enrichment and facilities tax rate currently is 45 cents.

House floor amendments retained.

Career ladder. The statewide career ladder program would be abolished. Teachers currently assigned to a career ladder level would be entitled to receive the 1992-93 career ladder supplement for as long as they remained with the same school district.

Prohibition on lobbyists. A school district would be prohibited from employing a legislative lobbyist required to register with the Texas Ethics Commission or any person whose primary duties are related to proposed legislation or administrative action, including supplying information to a member of the legislative or executive branch, monitoring the progress of proposed legislation or administrative action or acting as a proponent of proposed legislation or administrative action.

Accountability. The House version contained numerous provisions concerning school system accountability, including provisions concerning assessment of academic skills, performance indicators, accreditation status and sanctions and successful-school awards. The conference committee would permit certain districts to be exempt from regulations, reduce district reporting requirements and change student testing.

Alternative fuels. The House version would have repealed the requirement that school districts with more than 50 school buses purchase or lease only buses capable of using alternative fuels. The conference committee would phase in the requirement, requiring 50 percent of the fleet to use alternative fuels by 1997 and 90 percent by 2001. Conversion would be required only if it would result in savings.

Performance review of TEA. A committee consisting of the chair of the Senate Education and House Public Education committees, two members of the Senate, two members of the House, one teacher, one principal, one superintendent, and four representatives of businesses and communities, would review the mission, organization, size and effectiveness of the Texas Education Agency.

Abolition of TEA. The House version would have abolished the Texas Education Agency and repealed all chapters of the Education Code governing public education, effective September 1, 1995. The conference committee report would abolish the TEA and repeal all chapters except those governing school finance.

House floor amendments deleted.

(Most are included in the House version of HB 1064 by Erickson, for which the House has requested a conference committee.)

Class size limits. The House version would have permitted a school district to enroll as many as 24 students in an early elementary (kindergarten, first, second, third or fourth grade) class, rather than 22 students, after the first 12 weeks of a school year if necessary avoid class reorganization. A class could contain 24 students during any 12-week period if the district had a significant percentage of children of migrant workers.

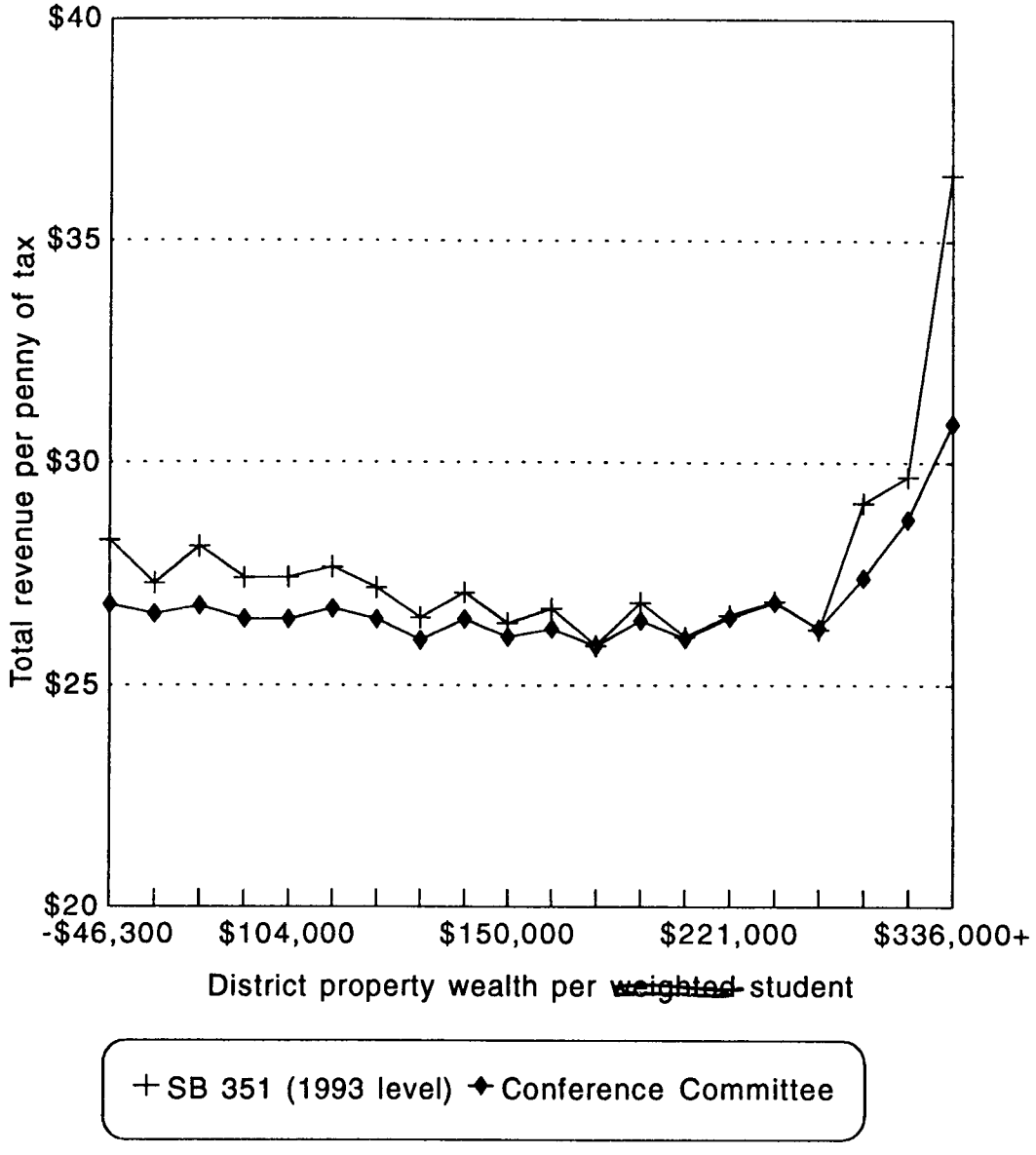
No-pass, no-play. The House version would have permitted a principal to remove after three weeks the six-week suspension from extracurricular activities of a student who received a grade lower than 70, if the student has not received a grade lower than 70 during that three-week period.

Length of school year. The House version would have permitted a school district to replace up to five days of instruction with an equal number of days of staff development.

Sex education. The House version would have prohibited the State Board of Education and the commissioner of education from requiring a local school district to offer a course in sex education.

Misdemeanor truancy. A student who, during six consecutive months in a school year, failed to attend school for five or more days without an excuse, would have committed a misdemeanor punishable by a fine of up to $500. Conviction of a second offense would have resulted in the one-year suspension of the student's driver's license or a one-year delay in issuance of a license.

Total Revenue per Penny of Tax per Weighted Student 1995 School Year

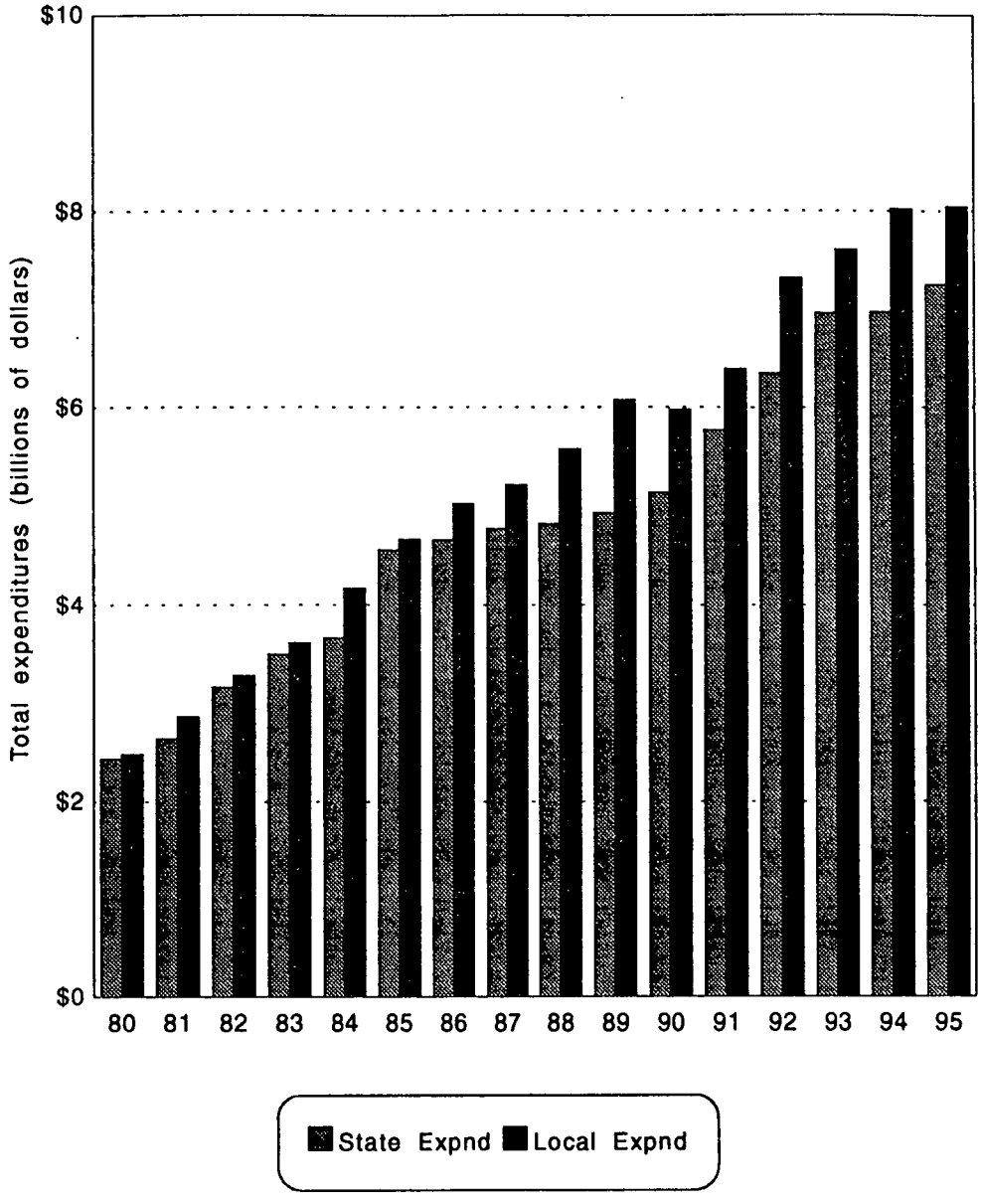


At 1993 district tax rates
Source: Legislative Budget Board

The majority opinion in the *Edgewood III* case, quoting from the *Edgewood I* opinion, stated, "There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds."

Figure 1 shows anticipated revenue per pupil in fiscal year 1995 for school districts with differing amounts of property wealth per pupil. Districts are asssumed to maintain their 1993 tax rates.

State and Local Shares Of Public Education Expenditures



For fiscal years
Assumes 1993 tax rates for 1994 and 1995
Source: Legislative Budget Board

The majority opinion in the *Edgewood III* (1992) case, repeating its analysis in the *Edgewood I* (1989) opinion, stated that one deficiency in the Texas school finance system was its "basic funding allocation with more than half of all state education funds coming from local property taxes rather than state revenue."

Figure 2 shows the relative state and local shares of public education expenditures since 1980. Districts are assumed to maintain their 1993 tax rates in 1994 and 1995. Districts could increase their tax rates, increasing local expenditures.